

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

VINCENT X. LEE, Register No. 37915,)	
)	
Plaintiff,)	
)	
v.)	No. 05-4108-CV-C-NKL
)	
DAVE DORMIRE, Superintendent, et al.,)	
)	
Defendant.)	

ORDER

On November 29, 2005, plaintiff filed a motion for reconsideration of the court's judgment entered on November 15, 2005. Relief from judgment can be sought pursuant to Fed. R. Civ. P. 60(b). However, Rule 60(b) "provides for extraordinary relief which may be granted only upon an adequate showing of exceptional circumstances." Reyher v. Champion, 975 F.2d 483, 488 (8th Cir. 1992) (quoting United States v. Young, 806 F.2d 805, 806 (8th Cir. 1986)). No exceptional circumstances justifying relief have been shown. Plaintiff's motion is denied.

On January 20, 2006, plaintiff filed a notice of appeal and request for leave to proceed in forma pauperis on appeal. Plaintiff's notice of appeal triggers the assessment of a \$255.00 appellate filing fee and constitutes consent for the deduction of that fee from his inmate account. 28 U.S.C. § 1915; Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997).

An appeal in forma pauperis, however, may not be taken if the court certifies, in writing, that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). The court finds plaintiff's appeal is not taken in good faith because plaintiff's claims were properly dismissed for failure to exhaust administrative remedies as required by 42 U.S.C. § 1997e.

Although the district court is denying plaintiff leave to proceed in forma pauperis on appeal, plaintiff may still seek to proceed under 28 U.S.C. § 1915, by filing with the appellate court a timely motion under Rule 24(a) of the Federal Rules of Appellate Procedure. Plaintiff also may pursue his appeal as a regular appellant, without the benefit of 28 U.S.C. § 1915, by paying the full \$255.00 appellate filing fee to the clerk of the district court within thirty days. If

plaintiff does not file a Rule 24(a) motion or pursue his appeal as a regular appellant, his appeal may be dismissed by the appellate court.

The denial of in forma pauperis status by the district court does not relieve plaintiff of the obligation to pay the \$255.00 appellate filing fee. Accordingly, plaintiff's financial documentation has been reviewed and an initial filing fee has been calculated.

IT IS, THEREFORE, ORDERED that plaintiff's motion for relief from judgment is denied [28]. It is further

ORDERED that plaintiff's appeal is not taken in good faith and plaintiff is denied leave to proceed in forma pauperis on appeal [29]. It is further

ORDERED that plaintiff's initial filing fee is calculated at \$1.70 and the Missouri Department of Corrections is directed to deduct from plaintiff's inmate account, and forward to the court, the initial filing fee and installment payments, in accord with the provisions of 28 U.S.C. § 1915, until the \$255.00 appellate filing fee is paid in full.

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: April 23, 2006
Jefferson City, Missouri